



Effective Date Posting: March 1, 2021
Identifier: No. MB0042APP

Proposed Guidance: Mortgage Broker Regulators' Council of Canada (MBRCC) National Code of Conduct

Purpose

This Approach Guidance outlines the Financial Services Regulatory Authority of Ontario's (FSRA's) principles, processes and practices for incorporating the proposed [Mortgage Broker Regulators' Council of Canada \(MBRCC\) National Code of Conduct \(Code\)](#) in FSRA's regulatory framework.

The Code promotes high standards of business conduct to protect consumers of mortgage brokering services. The principles of the Code correspond to existing conduct requirements in the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (MBLAA) and its regulations. These requirements help ensure consumers are treated appropriately.

FSRA will consider adherence to the Code as a factor in assessing whether an individual or entity is suitable for licensing. Non-compliance with the Code may indicate failing to meet certain obligations under the MBLAA.

Scope

This guidance affects the following entities regulated by FSRA:

- mortgage agents
- mortgage brokers
- mortgage brokerages
- mortgage administrators

Rationale and Background

The MBRCC developed the Code in response to industry feedback from the Canadian Mortgage Brokers Association–Ontario (CMBA-ON) and Mortgage Professionals Canada (MPC). MBRCC and the industry believe consumers would benefit from consistent minimum conduct standards for mortgage professionals across Canada.

The MBLAA and its regulations govern mortgage brokering activities in Ontario. The Code is a plain-language guide to help licensees comply with the MBLAA and its regulations; it will also help consumers understand licensees' obligations. It promotes regulatory compliance, confidence in the sector, and the interests of consumers who deal with licensees.

For the Industry

The Code provides simple, clear guidance on how to conduct mortgage brokering activities that protect consumers' interests. It does this by reminding licensees to:

- Provide products and services that are suitable for each client;
- Provide services in a transparent and effective manner; and
- Comply with all applicable legal and regulatory requirements.

For the Consumer

The Code outlines behaviour that consumers should expect from mortgage brokering licensees. By doing so, the Code:

- Raises awareness of consumers' rights when dealing with a licensee; and
- Provides consumers with a reference / education tool for appropriate conduct.

The principles of the Code correspond to existing requirements in the MBLAA and its regulations. Consumers of mortgage brokering services can use the Code to learn more about their rights. They can also use it to find out what appropriate service looks like.

FSRA Mandate

In supervising and regulating the mortgage brokering sector, FSRA administers and enforces the MBLAA and its regulations. FSRA aims to achieve the following statutory objects:

- Contribute to public confidence in the mortgage brokering sector;
- Monitor and evaluate trends in the mortgage brokering sector;
- Cooperate and collaborate with other regulators where appropriate;
- Promote high standards of business conduct;
- Protect the rights and interests of consumers; and
- Foster a strong, sustainable, and innovative sector.

Principles

FSRA will use a general supervision approach to achieve its statutory objects:

- *Proactive, Risk-based Approach* – FSRA focuses its supervision on high-risk licensees.
- *Governance* – FSRA expects brokerages and administrators to have effective internal controls and supervision to promote a strong compliance culture and mindset among licensees to identify and manage risks arising from their dealings with consumers.
- *Proportionate Approach to Discipline* – FSRA uses a range of compliance and enforcement tools to influence marketplace behaviour. The tools used depend on, for example, the nature and extent of risks to consumers, mitigating actions taken by licensees, and past supervisory findings.

Processes and Practices

Failure to comply with the Code in a material way is a breach of the MBLAA. This could lead to FSRA not renewing a licence or enforcement actions such as imposing licence conditions, revoking or suspending a licence, or imposing administrative monetary penalties.

FSRA expects all licensees to comply with the Code. Accordingly:

1. All applicants for licensing and renewal will acknowledge that they are aware of and understand the Code as part of their application.
2. The principal broker will declare, as part of the '[Mortgage Brokerage Declaration of Compliance](#)', that the brokerage has implemented processes to ensure that the brokerage and its agents and brokers adhere to the Code, and to identify and address any non-compliance.
3. Brokerages and administrators should incorporate the Code into their policies and procedures.
4. Brokerages and administrators should record non-adherence to the Code and should identify and implement actions to rectify the non-adherence. This information should be made available to FSRA upon request.
5. In their Annual Information Returns, administrators will be required to undertake to incorporate the principles of the Code in their policies and procedures.

Since the Code is principles-based, it allows licensees to implement processes, practices and controls in a way that will be the most effective and efficient for their business. FSRA expects licensees to assess themselves against the Code when setting or revising policies and procedures and operating their businesses. Licensees should be able to demonstrate application of the principles in ways appropriate to the nature, size and complexity of their business operations and activities.

Supervision

FSRA will ensure adherence to the Code by supervising against it. The following are approaches that FSRA may take to assess adherence:

- *Comprehensive desk reviews / onsite examinations* – When reviewing transactions completed by mortgage brokers, agents, and staff of mortgage administrators, FSRA will assess the documents and practices against the principles of the Code.
- *Targeted reviews* – FSRA will focus on specific principles within the Code, for example as a result of complaint-handling activities.
- *Thematic reviews* – FSRA may also conduct reviews over a large number of licensees relating to implementation of or adherence to the Code to assess overall trends or compliance of the industry.

FSRA's reviews may include an examination of the brokerages' or administrators' record of non-adherence to the Code and corrective actions taken.

Complaints Handling

FSRA expects that licensees should be the first point of contact, as appropriate, for consumer concerns.

Brokerages and administrators must establish a process for resolving complaints from the public, track all complaints and how they resolve them^[1]^[2]. Processes for filing and resolving complaints should be easy to access and use by the public. Complaints should be responded to in a timely, transparent, effective and fair manner. FSRA may request to review the brokerage or administrators' complaint handling policies and procedures, complaint resolution outcomes and statistics.

FSRA will review unresolved complaints submitted to FSRA about a licensee's conduct against the Code. Where FSRA finds non-compliance with MBLAA resulting from non-compliance with the Code, FSRA will take actions to address it (see Enforcement section below).

Complaints should be submitted to FSRA:

- According to the directions on the [FSRA website](#); and
- Using the [Business Activity Complaint form](#).

The Code will be posted on the [For Industry](#) and [For Consumer](#) sections of FSRA's website. Complainants can use / reference the Code in their complaints for conduct that fails to meet certain obligations under MBLAA.

Supervisory and Complaints Findings

FSRA will rely on data and analysis of Code complaints, inquiries, examinations and filings, to:

- inform licensee risk assessments;
- identify risks (e.g., failures in processes that result in consumer harm, repeat patterns of misconduct);
- validate environmental trends; and

- drive evidence-based decision-making for next steps in the supervisory process.

Feedback to licensees from supervisory findings will refer to the Code, relevant requirements of MBLAA, FSRA guidance or related best practices.

Enforcement and Suitability

FSRA will consider adherence to the Code as a factor in its assessment of whether an individual or entity is suitable for licensing. FSRA has authority to refuse, revoke or suspend a license based on suitability.

FSRA may take enforcement action to address breaches of licensee obligations under MBLAA and its regulations, most of which are reflected in the Code. FSRA takes into consideration the nature and extent of risks to consumers, mitigating actions taken by licensees, and past supervisory findings.

Enforcement actions include:

- warning or cautionary letters;
- imposition of licence conditions;
- licence suspension;
- licence revocation;
- imposition of administrative penalties; and
- prosecution in the courts.

Effective Date and Future Review

This Guidance is effective TBC and will be reviewed no later than TBC.

Effective March 1 2021, [Guideline No. 03/18: Treating Financial Services Consumers Fairly Guideline](#) will no longer apply to licensees in the mortgage brokering sector. It is replaced by this Approach Guidance. This Guidance was updated on May 19 2023. The effective date was updated to TBC to indicate that this is the consultation draft of the guidance.

About this Guidance

This Guidance is an Approach. Approach Guidance describes FSRA's internal principles, processes and practices for supervisory action and application of Chief Executive Officer

discretion. Approach Guidance may refer to compliance obligations but does not in and of itself create a compliance obligation. Visit [FSRA's Guidance Framework](#)

Effective Date: TBC

[1] Section 41 of Ontario Regulation 188/08: Mortgage Brokerages: Standards of Practice

[2] Section 26 of Ontario Regulation 189/08: Mortgage Administrators: Standards of Practice